



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.72 OF 2006

Renuka Mahila Sahkari Patsanstha
Through Kum. Manda Gangadhar Salve
Age: 40 years, Occu.: Secretary,
R/o. Indira Colony, Tarakpur, Ahmednagar,
District: Ahmednagar

**.. Appellant
(Orig. Complainant)**

Versus

1. Sau. Vijaya Ramchadra Gawli,
Age: 45 years, Occu.: Household,
R/o.: Chaudharinagar, Anuradha Cycle Mart,
Nagar-Solapur Road, Ahmednagar,
District: Ahmednagar

**.. Respondent
(Orig. Accused)**

2. The State of Maharashtra

.. Respondent

...

Advocate for Appellant: Mr. N. C. Garud
Advocate for Respondent No.1: Mr. P. V. Khiste
APP for Respondent No.2/State: Mr. R. D. Raut

...

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 24.06.2024

Pronounced on : 27.06.2024

JUDGMENT:

1. Original complainant, who instituted proceedings under Section 138 of the Negotiable Instruments Act, 1881 (N. I. Act) against present respondent, is assailing the judgment and order of acquittal passed by the learned 3rd Judicial Magistrate First Class, Ahmednagar in S.T.C. No.3697/1998, dated 24.03.2004.

2. Present appellant filed proceedings under Section 138 of the N. I. Act, contending that the complainant is an institution registered under the Maharashtra Co-operative Societies Act, 1960 and is involved in lending loan to the needy. Present respondent is a member of the patsanstha and she applied for loan and same was granted. Towards repayment she issued cheque but it was dishonoured. Therefore, after legal notice cheque amount was demanded but accused / respondent failed to pay the cheque amount and, therefore, proceedings under Section 138 of the N. I. Act were instituted. Learned trial court conducted proceedings and recorded acquittal. Hence, present appeal.

3. Learned counsel for the appellant pointed out that the complainant is a registered society under the Maharashtra Co-operative Societies Act. The respondent / member applied for loan and the same was granted. Towards repayment of loan cheque was issued but it was dishonoured and, therefore, after completing formalities of legal notice, complaint was filed. Learned counsel pointed out that cheque in question, bank memo, legal notice were all placed on record. Essential ingredients for attracting proceedings under Section 138 of the N. I. Act were available but learned trial court did not consider the same and acquitted the accused. That, learned trial court has not also considered

the law and, therefore, learned counsel seeks indulgence of this court in allowing the appeal.

4. Per contra, learned counsel for the respondent / accused would submit that the complainant failed to make out case under Section 138 of the N. I. Act. That, complainant could not make out case regarding application of loan, it's disbursement. That, complaint is silent as to how much loan amount was granted. That, there was no legally enforceable debt. All essential ingredients for attracting Section 138 of the N. I. Act were missing and, therefore, learned trial court committed no error in acquitting the accused and, hence, it is prayed that appeal being devoid of merits be dismissed.

5. Perused the papers.

6. It is a specific case of the complainant that present respondent applied for loan but application does not specify as to how much amount of loan was applied for and how much was disbursed. Complainant has also not placed on record very loan application in support of it's case, i.e. respondent applying for loan. Therefore, here, foundational facts are not proved. It is burden on complainant to prove existence of legally enforceable debt. Such crucial aspect at the first count is not established. Moreover, the bank memo is not connected to

respondent's account. Therefore, essentials for attracting Section 138 of the N. I. Act are patently missing. The complainant fails to establish legally enforceable debt at the end of the accused and, therefore, no fault can be found in the appreciation at the hands of the learned trial court. No case made out for interference. I proceed to pass following order:

ORDER

The Criminal Appeal stands dismissed.

[ABHAY S. WAGHWASE, J.]

marathe